

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: item number **11** is incorrectly applied to a punched portion (see Page 4, Line 11). Examiner recommends that “portions 10 and 11” in Line 11 on Page 4 be replaced by --portions 9 and 10--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Regarding claims 1-5, the purpose of the method recited in the preamble (“for the manufacture of coloured lipstick and gloss of the poured type”) is not further referred to in the body of the claims. When the preamble only recites the purpose of the process and does not further limit the body of the claim, it is not deemed to give further weight to the claimed method, *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976).

4. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Tobe (Japan Patent No. JP-62114907). Regarding claim 1, Tobe teaches a method comprising the steps of pouring at least two materials having different colors into

Art Unit: 4151

separate molds ("inner dishes 2, 4 are filled with cosmetics of different color from each other, respectively, pressed into solid forms"; see Abstract), punching at least one portion of each material ("punching cylinders of the same cross section 5, 6 are vertically inserted continuously into the solid cosmetics 1 and 3"; see Abstract), removing the punched portions from each material ("to effect scooping out"; see Abstract), and depositing the punched portions of the two materials in a packaging container ("arranged in a single vessel"; see Abstract) such that the shapes of the punched portions are complimentary to each other ("the scooped space 7 in the first cosmetic is filled with the punched piece of the second cosmetic 9, and vice versa"; see Abstract) to substantially cover all of the packaging container (see Figure 1 wherein the inner dishes 2 and 4 constitute the packaging containers).

Regarding claim 2, Tobe teaches a method wherein the punched portion removed from the first material has a shape corresponding to the portion not punched from the second material ("the scooped space 7 in the first cosmetic is filled with the punched piece of the second cosmetic 9, and vice versa"; see Abstract and Figure 1).

Regarding claim 3, Tobe teaches a method wherein a plurality of punched portions is removed from the first material having shapes corresponding to the portions not punched from the second material (see Figure 2).

Regarding claim 4, Tobe teaches a method wherein the punched portions of the two materials are arranged side by side in the packaging container (see Figure 1, wherein the side walls of punched portion 9 are placed next to the side walls of the unpunched portion of cosmetic 3, hence they are placed side by side).

Regarding claim 5, Tobe teaches a method wherein the first and second materials have the same thickness (see Figure 1, wherein cosmetics 2 and 3 are depicted with the same thickness).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tobe as applied to claim 1 above, and further in view of Contreras (U.S. Patent No. 4,938,675). Regarding claim 6, Tobe teaches the application of his method to the production of multicolor cosmetics ("cosmetics of different color from each other"; see Abstract) wherein each portion has a uniform thickness (see Figure 1, wherein cosmetics 2 and 3 are depicted with uniform thickness), but not explicitly teach lipstick or lip gloss as specific applications. In analogous art, specifically the manufacture of multicolor cosmetics, Contreras teaches segmented, multicolored lipstick ("multi-sectioned and multi-colored solid products of predetermined geometric and other shapes for use as pancake make-up, eyeshadow, lipstick"; see Column 1, Lines 11-14) using a segmented mold and a multi-step process for filling said mold (see Column 2, Lines 33-53). It would have been obvious to one of ordinary skill in the art at the time of the invention to have applied the method taught by Tobe to the multicolored lipstick

Art Unit: 4151

taught by Contreras for the benefit of eliminating the multi-step process for filling the mold.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM P. BELL whose telephone number is (571)270-7067. The examiner can normally be reached on Monday - Thursday, 7:30 am - 5:00 pm; Alternating Fridays, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Ortiz can be reached on 571-272-1206. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 4151

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

wpb

/Angela Ortiz/

Supervisory Patent Examiner, Art Unit 4151